STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE CO.,

Plaintiff-Appellant,

v

NORTHERN AWNING & WINDOW, L.L.C.,

Defendant,

and

INTEGRATED DESIGNS, INC.,

Defendant-Appellee.

UNPUBLISHED
April 18, 2006

No. 259488
Alger Circuit Court
LC No. 03-004005-NZ

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting summary disposition under MCR 2.116(C)(7) to defendant on plaintiff's subrogation claim for architectural malpractice. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Home owners contacted defendant Northern Awning & Window, L.L.C., to replace the metal roof on their home with a shingle roof. Northern Awning contacted defendant Integrated Designs, Inc., to design a shingle roof. Integrated Designs inspected the house and designed a shingle roof. On February 28, 2001, after a heavy snowfall, the roof collapsed. The home owners contacted Auto-Owners Insurance Company, their insurance company and the plaintiff in this case. Auto-Owners restored the roof.

On June 23, 2003, more than two years after the roof collapsed, Auto-Owners sued Integrated Designs on a subrogation claim alleging architectural malpractice. Integrated Designs moved for summary disposition under MCR 2.116(C)(7), relying on *Witherspoon v Guilford*, 203 Mich App 240; 511 NW2d 720 (1994), and arguing that the general two-year limitation period for malpractice claims in MCL 600.5805(6) barred Auto-Owners' claim. Relying on *Ostroth v Warren Regency, GP, LLC*, 263 Mich App 1; 687 NW2d 309 (2004), and *Michigan Millers Mut Ins Co v West Detroit Bldg Co, Inc*, 196 Mich App 367; 494 NW2d 1 (1992), Auto-Owners argued that a six-year limitation period for architectural malpractice claims under MCL 600.5805(14) and 600.5839(1) applied. The circuit court concluded that *Witherspoon* controlled

under the "first-out rule" of MCR 7.215(J)(1) because it was the first case to specifically address the relationship between the general two-year limitation period for malpractice claims and the special six-year limitation period for architectural malpractice claims. The circuit court held that the two-year limitation period under MCL 600.5805(6) applied, granted defendant's motion, and dismissed plaintiff's claim with prejudice.

Auto-Owners appeals by right and argues that a six-year limitation period applies to claims alleging architectural malpractice. We agree. Our Supreme Court recently examined and resolved this issue, deciding that a six-year limitation period applies to such claims and explicitly overruling *Witherspoon* on this point. *Ostroth v Warren Regency, GP, LLC*, 474 Mich 36, 46 n 15; 709 NW2d 589 (2006). The Court reasoned as follows:

> We hold that MCL 600.5805(14) unambiguously directs that the period of limitations for actions against architects is provided by MCL 600.5839(1). Moreover, the six-year period of MCL 600.5839(1) operates as both a statute of limitations and a statute of repose. . . . To the extent that the Court of Appeals decision in *Witherspoon, supra*, is inconsistent with this opinion, it is overruled. [*Id*.]

In light of the Supreme Court's decision in *Ostroth*, we reverse the circuit court's order granting summary disposition under MCR 2.116(C)(7) and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray